IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.207 OF 2007

Shri. Isa Ismail Baig .. Petitioner
V/s
Shri.A.N.Roy & Ors. .. Respondents

Mr.U.N.Tripathi for the Petitioner.
Mr.D.S.Mhaispurkar, APP for Respondents.

CORAM : DR.S.RADHAKRISHNAN, &
SMT.R.S.DALVI, JJ.

DATE : 5th September, 2007.

P.C.:

1. By this Petition, the detenu is challenging the detention order passed by the Detaining Authority on 26th October, 2006 under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, and Dangerous Persons Act, 1981. The Detention Order has been passed to prevent the detenu from acting in any manner prejudicial to the maintanance of public order. Pursuant to the aforesaid Detention Order dated 26.10.2006 the detenu was arrested and detained and the detenue was also furnished with the copy of Detention Order as well as grounds.

2. Mr.Tripathi, the learned Counsel appearing on behalf of the detenu has pointed out that there is a Criminal case registered against the detenu with regard to the

incident which took place on 2nd April, 2006, on which day, it was alleged that the detenu alongwith his associates rushed in with an iron rod and assaulted the right knee of the complainant, as a result of which he collapsed. Thereafter the detenu and his 5-7 associates entered the premises of Anwar Industry and damaged the glass of cabin, and thereafter he also hit the complainant on the head. Thereafter all the persons in that are ran helter-skelter. Based on the complaint of the complainant Mr.Iftekar Anwarul Khan, the Dindoshi Police Station has registered C.R.No.107 of 2006 against the detenu and his associates. It appears that immediately thereafter there was retaliation by the complainant and his associates and they had also assaulted the detenu and his associates with iron rods. In that behalf a counter complaint being C.R.No.108 of 2006 was registered at the Dindoshi Police Station at the instance of the detenu. Apart from the above case, the learned Counsel for the Detenu pointed out that two in camera statements have been recorded, one with regard to the Witness-A and the other with regard to witness-B wherein it was alleged that the detenu had used deadly weapon and tried to extort money from the shopkeepers as wll as the businessmen. Considering the above material, the Detention Order has been passed.

3. Mr.Tripathi, the lerned Counsel for the detenu

challenged the above Detention Order only on one ground, though various grounds have been raised in the Petition. The only ground is that in this case there is no proper verification by the Senior Police Officer with regard to the truthfulness of the statements of witnesses "A" & "B". Firstly, he has pointed out that whenever in-camera statements are recorded the said statements of the witnesses will have to be verified by a Senior Police Officer independently for the truthfulness of the said statement. He also pointd out that as the detenu was not aware of marathi, the original statement which was recorded in marathi had to be explained to the detenu in Hindi and the Senior Police officer also has to satisfy himself independently with regard to the truthfulness of the statement recorded therein. Mr.Tripathi, the learned Counsel for the detenu has further pointed out that in case of both the witnesses A & B, both the in-camera statements which were recorded on 4.9.2006 (of witness A) and 6.9.2006 (of witness B), the truthfullness of these statements had to be verified by the Police Officer, namely, in the instant case by Mr.B.M.Madhavi, the Assistant Commissioner of Police, Dindoshi Division, Brihanmumbai.

4. The contention of the lerned Counsel for the detenu Mr.Tripathi is that with regard to both the aforesaid statements the same were sought to be verified by the said Assistant Commissioner of Police Mr.B.M.Madhavi and

the endorsement made by the said Assistant Commissioenr of Police reads as under in hindi. Both the statements with regard to witness-A and Witness-B are identical. It says witness-A was present before the said Assistant Commisioner of Police on 7.9.2006. The officer has recorded that he verified the correctness of name and address and identity of the witness and thereafter he read out the statement which was recorded in marathi and thereafter he explained the statement of the witness in hindi. The witness thereafter stated that the statement has been correctly recorded as he has stated. Thereafter the officer has recorded that he made various enquiries and found that the witness was extremely scared with regard to the detenu. In view thereof the Asst.Commissioner of Police had directed that the name, address and other identity of the witness should not be disclosed in any manner and accordingly signed the same incorporating the above observations on 7.9.2006. With regard to witness-B also identical statement has been made by the officer concerned. Mr.Tripathi, the learned Counsel appearing on behalf of the detenu brought to our notice that the above object of verification by an independent Senior Police Officer is to ensure the truthfulness of the facts disclosed in the statement, since based on the said statements the person’s liberty can be deprived of. In that behalf, Mr.Tripathi referred to and relied upon the judgment of the Supreme Court in the case of **Phulwari Jagdambaprasad Pathak**

V/s.R.H.Mendonca & Ors.- 2000 All M.R.(Cri) 1503. The relevant observations in paragraph No.16 of the said judgment read as under:-

> "16. Then comes the crucial question whether 'in-camera statements of persons/witnesses can be utilised for the purpose of arriving at subjective satisfaction of the detaining authority for passing the order of detention. Our attention has not been drawn to any provision of the Act which expressly or impliedly lays down the type of material which can form the basis of a detention order under Section 3 of the Act. Preventive detention measure is a harsh, but it becomes necessary in larger interest of society. It is in the nature of a precautionary measure taken for preservation of public order. The power is to be used with caution and circumspection. For the purpose of exercise of the power it is not necessary to prove to the hilt that the person concerned had committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to the maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieve the power vested in the detaining authority should not be unduly restricted. It is neither possible nor advisable to catalogue the types of materials which can, from the basis of a detention order under the Act. That will depend on the facts and situation of a case. Presumably, that is why the Parliament did not make any provision in the Act in that regard and left the matter to the discretion of the detaining authority. **However, the facts stated in the materials relied upon should be true** and should have a reasonable nexus with the purpose for which the order is passed." (Emphasis supplied)

5. Mr.Tripathi also referred to and relied upon another judgment of our Court in the case of **Vijays Raju Gupta V/s.R.H.Mendonca & Ors. - 2001 All M.R.(Cri) 48.** The

observations in paragraph No.6 are relevant, which read as under:-

> "6. There remains no doubt in the light of the law laid down by the Apex Court that in camera statement of person/witness can be utilised by the detaining authority for the purpose of arriving at subjective satisfaction for passing the order of detention. However, the Apex Court made it clear that the facts stated in the materials relied upon should be true and have a reasonable nexus with the purpose for which the order is passed. Necessary corollary, therefore is that the detaining authority must be satisfied about the truthfulness of the statements made in the in camera statements. Testing it from this touch stone, we find that neither in the detention order nor in the grounds of detention, the detaining authority has stated anything that he was satisfied about the truthfulness of the statements made in the in camera statements. In the present case the petitioner has set up specific case that in camera statements were false and fabricated after the detenu was released on bail. The detaining authority in his first affidavit filed on 13.4.2000 has only denied that false and fabricated statements were recorded after the detenu was relased on 3.7.1999. While denying that the documents were fabricated, the detaining authority in his aforesaid affidavit has further stated that the in camera statements were verified by the higher grade police officer of the rank of A.C.P. As a matter of fact, in two subsequent affidavits, this stand has been reiterated and further statement has been made that he was subjectively satisfied that the contents of the in camera statements were true and genuine since it was verified by the Assistant Commissioner of Police. The English translation of the verification made by the Assistant Commissioner of Police below the in camera statements reads, "my statement was translated to me in Hindi which is in accordance with what I stated." This means that the Assistant Commissioner of Police has only verified that the statement made by the witness was recorded as actually made by him. Therefore on the basis of mere verification, without there being something more by way of contemporaneous document of material more over when no such statement is made in the grounds of detention that the statements made in the in camera statement were believed to be true, it is very difficult to hold that the detaining authority was in fact subjectively satisfied that the assertions made in camera statements were true. The detaining authority has to

apply his mind about the truthfulness of the assertions made in camera statements which in the facts of the present case seems to have not been done which in our opinion vitiates the detention order."

6. Mr.Tripathi finally referred to and relied upon the recent judgment of our Court in the case of **Mrs.Zabin Salim Hamja Shaikh V/s.Shri.A.N.Roy & Others - 2006 All M.R.(Cri) 3324.** The observations in paragraph No.9 are relevant, which read as under:-

"9. Mrs.Pai, the learned APP invited our attention to the reasons furnished in passing the detention order and more particularly the following statement of the Detaining Authority in para 5(b) i.e."After going through the proposal submitted by the Sr.Inspector of Police, Shahu Nagar Police Station and the verification of In-camera statements done by the Divisional Assistant Commissioiner of Police, I have reason to believe that the incidents narrated by the witnesses in their in camera statements to be true." We are not inclined to accept this statement as it is apparent that the Divisional Assistant Commissioner failed to verify regarding the truthfulness of the incidents as stated in both the in-camera statements. The learned APP, therefore, invited our attention to the affidavits filed by the Detaining Authority as well as the Asst.Commissioner of Police who had verified the said statements. The Asst.Commissioner in his affidavit has stated, "After independently enquiring with them I was satisfied about their identity and truthfulness of the incidents narrated by them as well the fear expressed by them of the detenu." In our opinion, this exercise by the Assistant Commissioner of Police is to fill in the gaps and such a statement cannot be accepted now in support of the contentions that the verifying officer had verified about the truthfulness of the incidents. From the file we have noted that the proposal was submitted by the Deputy Commissioner of Police who again in the mechanical manner stated that the ncidents were found to be truthful and in any case he was not the officer who did the verification of the witnesses whose statements were recorded in-camera. The material which was placed before the Detaining Authority alongwith the proposal submitted by the

DCP included the in-camera statements as well and the said statements lacked the legal requirements if they were held to be supporting the order of detention on the ground that the detenu is a dangerous person as defined under the MPDA Act. The learned APP relied upon the judgment of this Court in the case of Zebunnisa Abdul Majid Vs.M.N.Singh & Ors.- 2001 (3) Mh.L.J.365, and we must note that even in that case it is clear that the ACP had recorded the verification about the truthfulness of the incident."

7. In the light of the above, Mr.Tripathi, the learned Counsel for the detenu has contended that the Senior Police Officer must independently verify whether the facts stated by the witness are true and must also record his satisfaction to that effect when verifying the same. Mr.Tripathi, the learned Counsel for the detenu contended that merely later by an affidavit filed before this Court, the same cannot be improved. The same has to be incorporated when actually the witness is questioned by the Senior Police Officer. Mr.Tripathi, the learned Counsel for the detenu has contended that the said officer has only verified the identity of the witness and the statement was read over and explained and the witness stated that what is recorded in marathi was correct when it was explained to him in hindi. There is no endorsement that what is stated in the statement was true by independently questioning the witness and verifying with regard to the truthfulness of the facts stated therein. The officer has not made any endorsement that he had questioned the witness as to the

truthfulness of the facts disclosed in the same, and subsequently filing the affidavit will not help the Detaining Authority, inasmuch as in the above case, the said Asst. Commissinoer of Police has not actually verified the truthfulness of the incidents mentioned in the in-camera statements. Mr.Tripathi has contended that specially in the light of the aforesaid three judgments what is now left only is one CR and both the aforesaid in-camera statements cannot be relied upon, and only based on one C.R., no Detention Order can be passed, and hence the Detention Order should be quashed and set aside.

8. Mr.Mhaispurkar, the learned APP appearing on Detaining Authority referred to and relied upon the affidavit of the Assistant Commissioner of Police emphasising that he had verified the truthfulness, however, Mr.Mhaispurkar has conceded that in the endorsement made by the Assistant Commissioner on 7.9.2006 there is no endorsement to the effect that he had verified the truthfulness of the facts disclosed by the witness. Mr.Mhaispurkar, the learned APP sought to rely upon the Division Bench judgment of our Court in the case of **Shri.Narendra Bhurmal Jain V/s.S.M.Shangari & Ors. - Criminal Writ Petition No.281 of 2002 dated 29.4.2002,** wherein it is clearly observed that the concerned officer had made an endorsement "verified".

Verified in english means verification of the truthfulness of the statements, whereas, in this case there is no such endorsement of verification of truthfulness. As per the Oxford Dictionary (Revised and Updated) the word **verify** is defined as to establish the truth or correctness of by examination or demonstration.

9. Under the aforesaid facts and circumstances, especially in the light of aforesaid three judgments quoted by Mr.Tripathi, the learned Counsel for the detenu and in the light of the endoresement made by the Assistant Commissioner of Police on 7.9.2006, it is explictly clear that the concerned Senior Police Officer had not verified the truthfulness of the incident and the facts disclosed by both Witnesses A & B. In view thereof, both the statements cannot be relied upon and acted by the Detaining Authority. If that be so, the detenu cannot be detained only on the basis of one criminal complaint, being C.R.No.107 of 2006. Under the aforesaid facts and circumstances, we quash and set aside the impugned order of detention and the detenu be released forthwith unless the detenu is wanted in some other case. Accordingly, the rule is made absolute.

(SMT.R.S.DALVI, J.) **(DR.S.RADHAKRISHNAN,J.)**